

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 )  
ITT EDUCATIONAL SERVICES, INC., *et al.*<sup>1</sup> ) Case No. 16-07207-JMC-7A  
 )  
Debtors. ) Jointly Administered

**TRUSTEE'S 13<sup>th</sup> OMNIBUS MOTION TO COMPROMISE AND SETTLE  
AVOIDANCE CLAIMS IN THE GROSS AMOUNT OF \$50,000.01 OR MORE**

Deborah J. Caruso, the chapter 7 trustee in this case (the "Trustee"), by counsel, pursuant to 11 U.S.C. §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, requests entry of an order authorizing the Trustee to compromise and settle the Avoidance Claims (as defined below) listed on Exhibit 1 on the following grounds:

**I. JURISDICTION**

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for relief are sections 105 and 363 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

**II. BACKGROUND**

4. On September 16, 2016 (the "Petition Date"), ITT Educational Services, Inc. ("ITT"), ESI Service Corp. ("ESI") and Daniel Webster College, Inc. ("Webster College," and together with ITT and ESI, the "Affiliated Debtors") filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee under section 701

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<sup>1</sup> The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

of the Bankruptcy Code in each of the Affiliated Debtors' bankruptcy cases on the Petition Date, and in accordance with section 702(d) of the Bankruptcy Code, became the permanent case trustee on November 1, 2016 following the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors' bankruptcy cases to be jointly administered for procedural purposes only.

6. Pursuant to the *Order Granting Trustee's Motion for Authority to Settle Certain Classes of Controversies Pursuant to Bankruptcy Rule 9019(b)* (the "Settlement Authority Order") [Doc 2556], entered on May 30, 2018, the Trustee is required to obtain Court approval of settlements of causes of action under chapter 5 of the Bankruptcy Code (the "Avoidance Claims") that are in the gross amount of \$50,000.01 or more. In addition, the Settlement Authority Order authorizes the Trustee to file motions seeking approval of such settlements on an omnibus basis.

7. Attached and incorporated as Exhibit 1, is the schedule of settlements of Avoidance Claims in the gross amount of \$50,000.01 or more that have been entered into by the Trustee as of March 18, 2019,<sup>2</sup> which are subject to final approval by the Court.

### **III. RELIEF REQUESTED**

8. The Trustee requests entry of an order, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing the Trustee to (a) compromise and settle the Avoidance Claims listed on Exhibit 1 for the amounts listed, and (b) to retain the settlement proceeds from the settlements listed on Exhibit 1 for the general administration by the Affiliated Debtors' bankruptcy estates.

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<sup>2</sup> Exhibit 1 does not include settlements included in prior motions filed with the Court.

#### **IV. GROUNDS FOR GRANTING RELIEF**

9. A court may authorize a trustee to enter into a settlement so long as it is a sound exercise of the trustee's business judgment. *See* 11 U.S.C. § 363(b); *In re UAL Corp.*, 443 F.3d 565, 571 (7th Cir. 2006) (use under section 363 of the Bankruptcy Code must "[make] good business sense"); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (section 363 involves exercise of fiduciary duties and requires an "articulated business justification"); *see also In re Olde Prairie Block Owners, LLC*, 448 B.R. 482, 492 (Bankr. N.D. Ill. 2011) (same). Moreover, when applying the "business judgment" standard to a use of estate property under section 363 of the Bankruptcy Code, a trustee's judgment is "entitled to great judicial deference as long as a sound business reason is given." *See In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012).

10. Similarly, Bankruptcy Rule 9019(a) sets forth the requirements for compromises and settlements and permits a bankruptcy court to approve a trustee's "compromise or settlement" after notice and a hearing, if such settlement is "fair and equitable . . . and in the best interests of the bankruptcy estate." *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994); *see also In re Energy Co-op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) ("The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate."); *In re Smith*, No. 02-16450-JKC-7A, 2008 WL 4276171, at \*2 (Bankr. S.D. Ind. Sept. 10, 2008) (same). Settlements should be approved unless "the settlement 'falls below the lowest point in the range of reasonableness.'" *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004) (quoting *Energy Co-op.*, 886 F.2d at 929); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); *see also In re Artra Grp., Inc.*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003). Settlements and compromises are favored in bankruptcy because they expedite case administration and reduce unnecessary administrative

costs. *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000). In determining whether a compromise is in the best interests of the estate, the Court must compare “the settlement’s terms with the litigation’s probable costs and probable benefits.” *In re Am. Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987); *see also Doctors Hosp.*, 474 F.3d at 426 (“Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, including the possibility that disapproving the settlement will cause wasting of assets.”) (internal quotation marks and citations omitted); *Commercial Loan*, 316 B.R. at 697 (holding that relevant factors a bankruptcy court should consider in approving a settlement include “the litigation’s probability of success, its complexity, and its ‘attendant expense, inconvenience and delay’” (quoting *Am. Reserve Corp.*, 841 F.2d at 161)).

11. For the proposed settlements of Avoidance Claims listed on Exhibit 1, the Trustee determined the settlement terms based on the merits of the settlement parties’ defenses to the Avoidance Claims, the risk to the Affiliated Debtors’ bankruptcy estates if the Avoidance Claims were litigated, and the expense the Affiliated Debtors’ bankruptcy estates would likely incur in connection with such litigation. Based upon these considerations and the Trustee’s business judgment, the Trustee respectfully submits that the settlements of the Avoidance Claims listed on Exhibit 1 are fair, equitable, in the best interest of the Affiliated Debtor’ bankruptcy estates and within the range of reasonableness for approval under Bankruptcy Rule 9019(a).

## **V. NOTICE**

12. Pursuant to the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; and (d) those settlement parties listed on Exhibit 1.

**NOTICE IS GIVEN**, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern Time) on **April 3, 2019**. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail or in person at:

116 U.S. Courthouse  
46 East Ohio Street  
Indianapolis, IN 46204

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204. **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

**NOTICE IS FURTHER GIVEN** that in the event an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on **April 10, 2019** at **1:30 p.m.** (prevailing Eastern time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

**WHEREFORE**, the Trustee respectfully request entry of an order, (i) authorizing the Trustee to compromise and settle the Avoidance Claims listed on Exhibit 1 for the amounts listed, (ii) authorizing the Trustee to retain the settlement proceeds from the settlements listed on Exhibit 1 for the general administration by the Affiliated Debtors' bankruptcy estates, and (iii) granting the Trustee all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By: /s/ Meredith R. Theisen

Meredith R. Theisen

Deborah J. Caruso (Atty. No. 4273-49)  
John C. Hoard (Atty. No. 8024-49)  
James E. Rossow Jr. (Atty. No. 21063-29)  
Meredith R. Theisen (Atty. No. 28804-49)  
RUBIN & LEVIN, P.C.  
135 N. Pennsylvania Street, Suite 1400  
Indianapolis, Indiana 46204  
Tel: (317) 634-0300  
Fax: (317) 263-9411  
Email: dcaruso@rubin-levin.net  
johnh@rubin-levin.net  
jim@rubin-levin.net  
mtheisen@rubin-levin.net  
Attorneys for Deborah J. Caruso, Trustee

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2019, a copy of the foregoing *Trustee's 13<sup>th</sup> Omnibus Motion to Compromise and Settle Avoidance Claims in the Gross Amount of \$50,000.01 or More* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

John Joseph Allman jallman@hbkfirm.com, dadams@hbkfirm.com  
Richard Allyn rallyn@robinskaplan.com  
Robert N Amkraut ramkraut@foxrothschild.com  
Scott S. Anders scott.anders@jordanramis.com, litparalegal@jordanramis.com  
Manuel German Arreaza manuel.arreaza@cfpb.gov  
Todd Allan Atkinson tatkinson@ulmer.com  
Darren Azman dazman@mwe.com  
Kay Dee Baird kbaird@kdlegal.com, rhobdy@kdlegal.com; crbpgpleadings@kdlegal.com  
Michael I. Baird baird.michael@pbgc.gov, efile@pbgc.gov  
Christopher E. Baker cbaker@hbkfirm.com, thignight@hbkfirm.com  
James David Ballinger jim@kentuckytrial.com, jennifer@kentuckytrial.com  
Joseph E. Bant jebant@lewisricekc.com  
William J. Barrett william.barrett@bfkn.com, mark.mackowiak@bfkn.com  
Ashley Flynn Bartram ashley.bartram@oag.texas.gov  
Alex M Beeman alex@beemanlawoffice.com, abeeman@reminger.com  
Thomas M Beeman tom@beemanlawoffice.com  
Richard James Bernard rbernard@foley.com

Thomas Berndt tberndt@robinskaplan.com, jgerboth@robinskaplan.com  
John J Berry john.berry@dinsmore.com, Christina.Lee@DINSMORE.COM  
Lauren Beslow lauren.beslow@quarles.com  
Brandon Craig Bickle bbickle@gablelaw.com  
Michael Blumenthal michael.blumenthal@tklaw.com  
David J. Bodle dbodle@hhclaw.com, layres@hhlaw-in.com  
Robert A. Breidenbach rab@goldsteinpressman.com  
Wendy D Brewer wbrewer@fmdlegal.com, cbellner@fmdlegal.com  
Kayla D. Britton kayla.britton@faegrebd.com, noticeFRindy@faegrebd.com  
Robert Bernard Bruner bob.bruner@nortonrosefulbright.com  
Jason R Burke jburke@bbrlawpc.com, kellis@bbrlawpc.com  
Erin Busch ebusch@nebraska.edu  
John Cannizzaro john.cannizzaro@icemiller.com, Deborah.Martin@icemiller.com  
Kevin M. Capuzzi kcapuzzi@beneschlaw.com,  
lmolinaro@beneschlaw.com;docket@beneschlaw.com  
James E. Carlberg jcarlberg@boselaw.com,  
mwakefield@boselaw.com;rmurphy@boselaw.com  
Steven Dean Carpenter scarpenter1@dor.in.gov  
Deborah Caruso dcaruso@rubin-levin.net, dwright@rubin-levin.net;jkrichbaum@rubin-levin.net;atty\_dcaruso@bluestylus.com  
Deborah J. Caruso trustee caruso@rubin-levin.net, DJC@trustesolutions.net  
Joshua W. Casselman jcasselman@rubin-levin.net, angie@rubin-levin.net;atty\_jcasselman@bluestylus.com  
Ben T. Caughey ben.caughey@merchocaughey.com  
Sonia A. Chae chaes@sec.gov  
John Andrew Chanin jchanin@lindquist.com, srummery@lindquist.com  
Courtney Elaine Chilcote courtney@ckhattorneys.com,  
ckh@ckhattorneys.com;tracy@ckhattorneys.com  
Dale C Christensen christensen@sewkis.com  
Eboney Delane Cobb ecobb@pbfc.com  
Tiffany Cobb tscobb@vorys.com  
Michael Edward Collins mcollins@manierherod.com  
Michael Anthony Collyard mcollyard@robinskaplan.com, rhoule@robinskaplan.com  
Eileen Connor econnor@law.harvard.edu  
Lawrence D. Coppel lcoppel@gfrlaw.com  
Heather M. Crockett Heather.Crockett@atg.in.gov, darlene.greenley@atg.in.gov  
J Russell Cunningham rcunningham@dnlc.net, reaster@dnlc.net  
Erica Dausch edausch@babstcalland.com  
Melissa J. DeGroff mjd@kgrlaw.com, cjs@kgrlaw.com  
Dustin R. DeNeal dustin.deneal@faegrebd.com, noticeFRindy@faegrebd.com  
Laura A DuVall Laura.Duvall@usdoj.gov, Catherine.henderson@usdoj.gov  
Stephen Emedi semedi@law.harvard.edu  
Abby Engen aengen@nmag.gov, eheltman@nmag.gov  
Annette England annette.england@btlaw.com  
Charles Anthony Ercole cercole@klehr.com, acollazo@klehr.com  
Carolyn Meredith Fast carolyn.fast@ag.ny.gov  
Elaine Victoria Fenna elaine.fenna@morganlewis.com

Andrew W Ferich awf@chimicles.com  
Scott Patrick Fisher sfisher@drewrysimmons.com, lgarrison@DSVlaw.com  
John David Folds dfolds@bakerdonelson.com, sparson@bakerdonelson.com  
Jennifer N Fountain jfountain@iislaw.com, sfilippini@iislaw.com  
Sarah Lynn Fowler sarah.fowler@mbcblaw.com, deidre.gastenveld@mbcblaw.com  
Robert W. Fuller rf Fuller@rbh.com  
Carlos Galliani carlos@thelidjifirm.com  
Jonathan William Garlough jgarlough@foley.com, mstockl@foley.com;mdlee@foley.com  
Lisa Giandomenico lgiandomenico@nmag.gov  
Lea Pauley Goff lea.goff@skofirm.com, emily.keith@skofirm.com  
Barry S. Gold bgold@mmlawus.com  
John C Goodchild john.goodchild@morganlewis.com  
Douglas Gooding dgooding@choate.com  
John Andrew Goodridge jgoodridge@jaglo.com, angray@jaglo.com;dwhiggs@jaglo.com  
Michael Wayne Grant michael.w.grant@doj.state.or.us  
Richard Grayson Grant rgrant@rgglaw.com, grantecf@gmail.com  
Alan Mark Grochal agrochal@tydingslaw.com  
Elizabeth N. Hahn ehahn@rubin-levin.net, mralph@rubin-levin.net  
Gregory Forrest Hahn ghahn@boselaw.com, jmcneeley@boselaw.com  
Julian Ari Hammond jhammond@hammondlawpc.com, ppecherskaya@hammondlawpc.com  
Wallace M Handler whandler@swappc.com, kkloock@swappc.com  
William J. Hanlon whanlon@seymarth.com  
Adam Craig Harris adam.harris@srz.com  
Brian Hauck bhauck@jenner.com  
Jeffrey M. Hawkinson jhawkinson@pcslegal.com, danderson@pcslegal.com  
Michael J. Hebenstreit mjh@whzlaw.com,  
arlene@whzlaw.com;ene@whzlaw.com;kdt@whzlaw.com  
Amanda Marie Hendren amanda@indianalawgroup.com  
Claude Michael Higgins Michael.Higgins@ag.ny.gov  
Michael W. Hile mhile@jacobsonhile.com, assistant@jacobsonhile.com  
Sean M Hirschten shirschten@psrb.com  
Robert M. Hirsh robert.hirsh@arentfox.com  
John C. Hoard johnh@rubin-levin.net, jkrichbaum@rubin-levin.net;atty\_jch@trustesolutions.com;sturpin@rubin-levin.net  
Curt Derek Hochbein chochbein@rubin-levin.net, mralph@rubin-levin.net;lking@rubin-levin.net;atty\_chochbein@bluestylus.com  
Jeffrey A Hokanson jeff.hokanson@icemiller.com, bgnotices@icemiller.com  
Steven Howard Holinstat sholinstat@proskauer.com  
Diana Hooley diana.hooley@state.ma.us  
Thomas Ross Hooper hooper@sewkis.com  
George Wade Hopper ghopper@cohenandmalad.com, klandeck@cohenandmalad.com  
Andrew E. Houha bkecfnotices@johnsonblumberg.com  
Andrew W. Hull awhull@hooverhullturner.com, fgipson@hooverhullturner.com  
James C Jacobsen jjacobsen@nmag.gov, eheltman@nmag.gov  
Christine K. Jacobson cjacobson@jacobsonhile.com, 5412@notices.nextchapterbk.com  
Jay Jaffe jay.jaffe@faegrebd.com, noticeFRindy@faegrebd.com  
David Januszewski djanuszewski@cahill.com



Benjamin F Johns bfj@chimicles.com, klw@chimicles.com  
Russell Ray Johnson russj4478@aol.com  
Kenneth C. Jones kcjones@lewisricekc.com  
Anthony R. Jost tjost@rbelaw.com, baldous@rbelaw.com  
David J. Jurkiewicz DJurkiewicz@boselaw.com,  
mwakefield@boselaw.com;rmurphy@boselaw.com;dlingenfelter@boselaw.com  
Timothy Q. Karcher tkarcher@proskauer.com  
Alan Katz akatz@lockelord.com  
Richard B. Kaufman richardkfmn@gmail.com  
Carly Kessler ckessler@robinskaplan.com  
John M. Ketcham jketcham@psrb.com, scox@psrb.com  
Taejin Kim tae.kim@srz.com  
Edward M King tking@fbtlaw.com, lsugg@fbtlaw.com;tking@ecf.inforuptcy.com  
Roy F. Kiplinger bankruptcy@kiplingerlaw.com, bankruptcy@kiplingerlaw.com  
Jackson Taylor Kirklin taylor.kirklin@usdoj.gov,  
denise.woody@usdoj.gov;melanie.crouch@usdoj.gov  
James A. Knauer jak@kgrlaw.com, tjf@kgrlaw.com  
Kevin Dale Koons kkoons@kgrlaw.com  
Harris J. Koroglu hkoroglu@shutts.com, fsantelices@shutts.com  
Lawrence Joel Kotler ljkotler@duanemorris.com  
Robert R Kracht rrk@mccarthylebit.com  
Andrew L. Kraemer akraemer@johnsonblumberg.com, akraemerlawoffice@att.net  
David R. Krebs dkrebs@hbkfirm.com, dadams@hbkfirm.com  
Jerrold Scott Kulback jkulback@archerlaw.com  
Jay R LaBarge jlabarge@stroblpc.com  
Darryl S Laddin bkrfilings@agg.com  
Michael J. Langlois mlanglois@shouselanglois.com, rshouse@shouselanglois.com  
Vilda Samuel Laurin slaurin@boselaw.com  
Jordan A Lavinsky jlavinsky@hansonbridgett.com  
Todd Evan Leatherman todd.leatherman@ky.gov  
David S Lefere dlefer@mikameyers.com, jfortney@mikameyers.com  
Anthony Darrell Lehman alehman@hwpwlegal.com  
Martha R. Lehman mlehman@salawus.com,  
marthalehman87@gmail.com;pdidandeh@salawus.com;lengle@salawus.com  
Gary H Leibowitz gleibowitz@coleschotz.com,  
blansinger@coleschotz.com;pratkowiak@coleschotz.com  
Donald D Levenhagen dlevenhagen@landmanbeatty.com  
Elizabeth Marie Little elizabeth.little@faegrebd.com  
Edward J LoBello elobello@msek.com  
Melinda Hoover MacAnally Melinda.MacAnally@atg.in.gov,  
Carrie.Spann@atg.in.gov;Kenyatta.Peerman@atg.in.gov  
Christopher John Madaio Cmadaio@oag.state.md.us  
John A. Majors jam@morganandpottinger.com, majormajors44@yahoo.com  
Steven A. Malcoun dsmith@mayallaw.com  
Jonathan Marshall jmarshall@choate.com  
Thomas Marvin Martin tmmartin@lewisricekc.com  
Jeff J. Marwil jmarwil@proskauer.com,

npetrov@proskauer.com;pyoung@proskauer.com;sholinstat@proskauer.com  
 Richard J Mason rmason@mcguirewoods.com  
 C. Ed Massey mbracken@nkylawyers.com, cedmassey@nkylawyers.com  
 Ann Wilkinson Matthews amatthews@ncdoj.gov  
 Rachel Jaffe Mauceri rachel.mauceri@morganlewis.com  
 Michael Wesley McBride mmcbride@cohenandmalad.com, klandeck@cohenandmalad.com  
 Michael K. McCrory mmccrory@btlaw.com, bankruptcyindy@btlaw.com  
 Maureen Elin McOwen molly.mcowen@cfpb.gov  
 Harley K Means hkm@kgrlaw.com, kwhigham@kgrlaw.com;cjs@kgrlaw.com  
 Toby Merrill tomerrill@law.harvard.edu, ppsl@law.harvard.edu  
 Robert W. Miller rmiller@manierherod.com  
 Sherry Millman smillman@stroock.com  
 Jason Milstone jason.milstone@cmsenergy.com  
 Thomas E Mixdorf thomas.mixdorf@icemiller.com, susan.cogdill@icemiller.com  
 Evgeny Grigori Mogilevsky eugene@egmlegal.com,  
 emily@egmlegal.com;mogilevskyer41855@notify.bestcase.com  
 James P Moloy jmoloy@boselaw.com,  
 dlingenfelter@boselaw.com;mwakefield@boselaw.com  
 Ronald J. Moore Ronald.Moore@usdoj.gov  
 Hal F Morris hal.morris@oag.texas.gov  
 Michael David Morris michael.morris@ago.mo.gov  
 Kevin Alonzo Morrissey kmorrissey@lewis-kappes.com, soliver@lewis-  
 kappes.com;leckert@lewis-kappes.com;kwilliams@lewis-kappes.com  
 Whitney L Mosby wmosby@bgdlegal.com, fwolfe@bgdlegal.com  
 C Daniel Motsinger cmotsinger@kdlegal.com,  
 cmotsinger@kdlegal.com;crbpgpleadings@kdlegal.com;shammersley@kdlegal.com  
 Lee Duck Moylan lmoylan@klehr.com, acollazo@klehr.com  
 Joseph L. Mulvey joseph@mulveyllc.com, linda@mulveyllc.com  
 Abraham Murphy murphy@abrahammurphy.com  
 Justin Scott Murray jmurray@atg.state.il.us  
 Alissa M. Nann anann@foley.com, DHeffer@foley.com  
 Henry Seiji Newman hsnewman@dglaw.com  
 Kevin M. Newman knewman@menterlaw.com, kmnbk@menterlaw.com  
 Cassandra A. Nielsen cnielsen@rubin-levin.net,  
 atty\_cnielsen@bluestylus.com,mralph@rubin-levin.net;lking@rubin-levin.net  
 Ryan Charles Nixon rcnixon@lamarcalawgroup.com  
 Isaac Nutovic inutovic@nutovic.com  
 Michael O'Donnell mike.odonnell@nortonrosefulbright.com  
 Gregory Ostendorf gostendorf@scopelitis.com, agregory@scopelitis.com  
 Weston Erick Overturf wes.overturf@mbcblaw.com,  
 deidre.gastenveld@mbcblaw.com;ellen.sauter@mbcblaw.com  
 Pamela A. Paige ppaige@plunkettcooney.com, amiller@plunkettcooney.com  
 Kenneth Pasquale kpasquale@stroock.com  
 Eric Pendergraft ependergraft@slp.law, dwoodall@slp.law;bss@slp.law  
 Danielle Ann Pham danielle.pham@usdoj.gov  
 Anthony Pirraglia anthony.pirraglia@tklaw.com  
 Jack A Raisner jar@outtengolden.com,

kdeleon@outtengolden.com;jquinonez@outtengolden.com  
Jonathan Hjalmer Reischl jonathan.reischl@cfpb.gov  
Michael Rella mrella@mmlawus.com  
Caroline Ellona Richardson caroline@paganelligroup.com, anna@paganelligroup.com  
James Leigh Richmond James.Richmond@fldoe.org  
Mai Lan Gabrielle Rodgers Rodgers.MaiLan@pbgc.gov, efile@pbgc.gov  
John M. Rogers johnr@rubin-levin.net, jkrichbaum@rubin-levin.net;atty\_rogers@bluestylus.com;mralfp@rubin-levin.net  
Melissa M. Root mroot@jenner.com, wwilliams@jenner.com  
David A. Rosenthal darlaw@nlci.com  
James E Rossow jim@rubin-levin.net, ATTY\_JER@trustesolutions.com;robin@rubin-levin.net;lisa@rubin-levin.net  
Rene Sara Roupinian rsr@outtengolden.com,  
jxh@outtengolden.com;kdeleon@outtengolden.com;rfisher@outtengolden.com;gl@outtengolden.com;jquinonez@outtengolden.com  
Victoria Fay Roytenberg vroytenberg@law.harvard.edu, jjimenez@law.harvard.edu  
Steven Eric Runyan ser@kgrlaw.com  
Craig Damon Rust craig.rust@doj.ca.gov, Lindsay.Bensen@doj.ca.gov  
Karl T Ryan stacey@ryanesq.com, kryan@ryanesq.com  
Joseph Michael Sanders jsanders@atg.state.il.us  
Thomas C Scherer tscherer@bgdlegal.com, fwolfe@bgdlegal.com  
James R. Schrier jrs@rtslawfirm.com, lrobison@rtslawfirm.com;jlandes@rtslawfirm.com  
Ronald James Schutz rschutz@robinskaplan.com  
H. Jeffrey Schwartz jschwartz@robinskaplan.com  
Courtney Michelle Scott cscott1@dor.in.gov  
Joseph E Shickich jshickich@foxrothschild.com, vmagda@foxrothschild.com  
Randall R Shouse rshouse@shouselanglois.com, mlangois@shouselanglois.com  
William E Smith wsmith@k-glaw.com, clipke@k-glaw.com  
Lauren C. Sorrell lsorrell@kdlegal.com,  
ayeskie@kdlegal.com;swaddell@kdlegal.com;cmotsinger@kdlegal.com;shammersley@kdlegal.com  
Berry Dan Spears berrydspears616@gmail.com  
Catherine L. Steege csteege@jenner.com, mhinds@jenner.com;thooker@jenner.com  
LaChelle D Stepp lstepp@steppjaffe.com, lastepp@yahoo.com  
Jason V Stitt jstitt@kmklaw.com  
Sharon Stolte sstolte@sandbergphoenix.com  
Jesse Ellsworth Summers esummers@burr.com, sguest@burr.com  
Jonathan David Sundheimer jsundheimer@btlaw.com  
Nathan L Swehla nswehla@graydon.law  
Nancy K. Swift nswift@buchalter.com, cbohnsack@buchalter.com  
Andrew W.J. Tarr atarr@robinsonbradshaw.com  
Eric Jay Taube eric.taube@wallerlaw.com,  
annmarie.jezisek@wallerlaw.com;sherri.savala@wallerlaw.com  
Meredith R. Theisen mtheisen@rubin-levin.net, dwright@rubin-levin.net;mcruser@rubin-levin.net  
Meredith R. Theisen mtheisen@rubin-levin.net,  
atty\_mtheisen@bluestylus.com;mralfp@rubin-levin.net

Jessica L Titler jt@chimicles.com  
David Tocco djtocco@vorys.com, mdwalkuski@vorys.com  
Todd Christian Toral todd.toral@dlapiper.com, todd-toral-9280@ecf.pacerpro.com  
Ronald M. Tucker rtucker@simon.com, cmartin@simon.com, bankruptcy@simon.com  
Christopher Turner christopher.turner@lw.com, DCItiserv@lw.com  
U.S. Trustee ustpreion10.in.ecf@usdoj.gov  
Michael Ungar MUngar@mwe.com  
Lauren Valkenaar lauren.valkenaar@nortonrosefulbright.com  
Sally E Veghte sveghte@klehr.com, acollazo@klehr.com  
Rachel Claire Verbeke rverbeke@strobpc.com  
Aimee Vidaurri aimee.vidaurri@nortonrosefulbright.com  
Amy L VonDielingen avondielingen@woodmclaw.com  
Amy E Vulpio vulpioa@whiteandwilliams.com  
Carolyn Graff Wade Carolyn.G.Wade@doj.state.or.us  
Louis Hanner Watson louis@watsonnorris.com  
Jeffrey R. Waxman jwaxman@morrisjames.com,  
jdawson@morrisjames.com;wweller@morrisjames.com  
Christine M.H. Wellons christine.wellons@maryland.gov  
Philip A. Whistler philip.whistler@icemiller.com, melodye.mills@icemiller.com  
Bradley Winston bwinston@winstonlaw.com, lwheaton@winstonlaw.com  
Brandon Michael Wise bwise@prwlegal.com  
Cathleen Dianne Wyatt cwyatt@fbtlaw.com, tacton@fbtlaw.com  
Joseph Yar jyar@nmag.gov, eheltman@nmag.gov, lgiandomenico@nmag.gov  
James T Young james@rubin-levin.net, lking@rubin-  
levin.net;atty\_young@bluestylus.com;mralfp@rubin-levin.net  
James E. Zoccola jzoccola@lewis-kappes.com

I further certify that on March 18, 2019, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's 13<sup>th</sup> Omnibus Motion to Compromise and Settle Avoidance Claims in the Gross Amount of \$50,000.01 or More* was emailed to the following:

Arlington ISD/Richardson ISD: Eboney Cobb at ecobb@pbfc.com  
CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com  
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com  
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com  
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com  
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com  
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com  
Taxing Authority for Harris County, Texas: John P. Dillman at houston\_bankruptcy@lgbs.com  
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov  
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com  
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com  
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com  
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com  
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov  
Florida Department of Education: Benman D. Szeto at benman.szeto@fldoe.org

Last Second Media, Inc.: T. Todd Egland at tegland@beldenblaine.com  
Hung Duong: Kevin Schwin at kevin@schwinlaw.com  
Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov  
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com  
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com  
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org  
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

I further certify that on March 18, 2019, pursuant to Section IV.C.3(b)(ii) of the Case Management Procedures, a copy of the foregoing *Trustee's 13<sup>th</sup> Omnibus Motion to Compromise and Settle Avoidance Claims in the Gross Amount of \$50,000.01 or More* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

Consumers Energy Company Attn: Legal Dept. One Energy Plaza Jackson, MI 49201	EBSCO Industries, Inc. 5724 Highway 280 East Birmingham, AL 35242	KPMG, LLP 345 Park Avenue New York, NY 10154
Property Solutions, Inc. 323 New Albany Road Moorestown, NJ 08057	Ricoh USA, Inc. c/o Olivia Moody 3920 Arkwright Road Suite 400 Macon, GA 31210	

/s/ Meredith R. Theisen  
Meredith R. Theisen

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